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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

13 JASON KINSFATHER,

14 Plaintiff,

15 v.

16 PIERCE COUNTY *et al.*,

17 Defendants.
18

CASE NO. C09-5129RBL/JRC

ORDER ON PENDING
MOTIONS

19 This 42 U.S.C. § 1983 action has been referred to the undersigned Magistrate Judge
20 pursuant to 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrates Judges' Rules
21 MJR 1, MJR 3, and MJR 4. The matter is before the Court on two motions filed by Plaintiff
22 (Dkt. # 20 and 23).

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24 The first motion, (Dkt. # 20), appears to ask for leave to amend the complaint to bring a
25 claim against Pierce County. To the extent that Plaintiff wishes to bring a claim against Pierce
26 County, the motion is DENIED. The County cannot be held liable for the acts of its employees

1 under §1983. Plaintiff already has a complaint on file against Defendant Morales, which will
2 still go forward, as set forth below.

3 In the second motion, (Dkt. # 23), Plaintiff asks the Court to Order the Marshal's Service
4 to again attempt to serve Defendant Morales. Plaintiff states that he has an updated address and
5 has provided new marshal's service forms. The motion is GRANTED. The court finds it is
6 appropriate for the U.S. Marshal to conduct service in this matter.
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8 Service of the complaint shall proceed as directed below:

9 (1) Service by United States Marshal.

10 It is hereby ORDERED that the United States Marshal shall send the following to
11 defendant Morales by first class mail: a copy of the Complaint and of this Order, two copies of
12 the Notice of Lawsuit and Request for Waiver of Service of Summons, a Waiver of service of
13 Summons, and a return envelope, postage prepaid, addressed to the Clerk's Office. All costs of
14 service shall be advanced by the United States. The Clerk shall assemble the necessary
15 documents to effect service.
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17 (2) Response Required

18 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of
19 Service of Summons. Each defendant who timely returns the signed Waiver shall have **sixty**
20 **(60) days** after the date designated on the Notice of Lawsuit to file and serve an answer or a
21 motion directed to the complaint, as permitted by Rule 12 of the Federal Rules of Civil
22 Procedure.
23

24 Any defendant who fails to timely return the signed Waiver will be personally served
25 with a summons and complaint, and may be required to pay the full costs of such service,
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1 pursuant to Rule 4(d)(2). A defendant who has been personally served shall file an answer or
2 motion permitted under Rule 12 within **thirty (30) days** after service.

3 (3) Filing and Service by Parties, Generally.

4 All original documents and papers submitted for consideration by the court in this case,
5 and a duplicate of all such papers, are to be filed with the Clerk of this court. The originals and
6 copies of all such papers shall indicate in the upper right-hand corner the name of the Magistrate
7 Judge to whom the copies are to be delivered. The papers shall be accompanied by proof that
8 such documents have been served upon counsel for the opposing party (or upon any party acting
9 *pro se*). The proof shall show the day and manner of service and may be written
10 acknowledgment of service, by certificate of a member of the bar of this court, or by affidavit of
11 the person who served the papers.
12

13 (4) Motions.

14 Any request for court action shall be set forth in a motion, properly filed and served. A
15 party must file and serve with the motion a supporting memorandum. The motion shall include
16 in its caption (immediately below the title of the motion) a designation of the Friday upon which
17 the motion is to be noted upon the court's calendar. That date shall be the third Friday following
18 filing of the motion (fourth Friday for Motions for Summary Judgment). All briefs and affidavits
19 in opposition to any motion shall be filed and served not later than 4:30 p.m. on the Monday
20 immediately preceding the Friday appointed for consideration of the motion. If a party fails to
21 file and serve timely opposition to a motion, the court may deem any opposition to be without
22 merit. The party making the motion may file, not later than 4:30 p.m. on the Thursday
23 immediately preceding the Friday designated for consideration of the motion, a response to the
24 opposing party's briefs and affidavits.
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1 (5) Motions for Summary Judgment

2 If one of the parties files a motion for summary judgment pursuant to Federal Rules of
3 Civil Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56
4 requires a nonmoving party to submit affidavits or other evidence in opposition to a motion for
5 summary judgment if the moving party has shown the absence of issues of material fact and an
6 entitlement to judgment as a matter of law. A nonmoving party may not rest upon the mere
7 allegations or denials of prior pleadings. Rather, successful opposition to a motion for summary
8 judgment requires the nonmoving party to set forth, through affidavits or other evidence, specific
9 facts showing a genuine issue for trial. Failure by the nonmoving party to oppose a summary
10 judgment motion or to present counter evidence could result in the Court accepting the moving
11 party's evidence as the truth, and entering final judgment in favor of the moving party without a
12 full trial. Rand v. Rowland, 113 F.3d 1520 (9th Cir. 1997).
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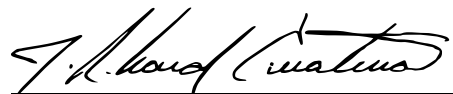
14 (6) Direct Communications with District Judge or Magistrate Judge

15 No direct communication is to take place with the District Judge or Magistrate Judge with
16 regard to this case. All relevant information and papers are to be directed to the Clerk.
17

18 (7) Clerk's Action

19 The Clerk is directed to send a copy of this Order and of the General Order issued by the
20 Magistrate Judges to plaintiff.
21

22 DATED this 18th day of August, 2009.

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25 J. Richard Creatura
26 United States Magistrate Judge